

## **IC 14-34-7**

### **Chapter 7. Self-Bonding**

#### **IC 14-34-7-0.5**

##### **"Collateral" defined**

Sec. 0.5. As used in this chapter, "collateral" means the actual or constructive deposit, as appropriate, with the director of one (1) or more of the following types of property in support of a self-bond:

(1) A perfected, first-lien security interest in favor of the department of natural resources in real property located in Indiana that meets the requirements of this chapter.

(2) Securities backed by the full faith and credit of the United States government, or state government securities, that are:

(A) acceptable to;

(B) endorsed to the order of; and

(C) placed in the possession of;

the director.

(3) Personal property that is located in Indiana and owned by the applicant, the market value of which is more than one million dollars (\$1,000,000) per property unit.

*As added by P.L.176-1995, SEC.8.*

#### **IC 14-34-7-0.6**

##### **"Comparative balance sheet" defined**

Sec. 0.6. As used in this chapter, "comparative balance sheet" means item accounts from a number of the operator's successive yearly balance sheets arranged side by side in a single statement.

*As added by P.L.176-1995, SEC.9.*

#### **IC 14-34-7-0.7**

##### **"Comparative income statement" defined**

Sec. 0.7. As used in this chapter, "comparative income statement" means an operator's income statement amounts for a number of successive yearly periods arranged side by side in a single statement.

*As added by P.L.176-1995, SEC.10.*

#### **IC 14-34-7-1**

##### **"Liabilities" defined**

Sec. 1. As used in this chapter, "liabilities" means obligations to transfer assets or provide services to other entities in the future as a result of past transactions. The term does not include amounts that are required to be recorded for financial accounting purposes under Statement of Financial Accounting Standards number 106 issued by the Financial Accounting Standards Board and effective December 1990.

*As added by P.L.1-1995, SEC.27. Amended by P.L.176-1995, SEC.11.*

#### **IC 14-34-7-2**

##### **"Net worth" defined**

Sec. 2. As used in this chapter, "net worth":

- (1) means:
  - (A) total assets; minus
  - (B) total liabilities; and
- (2) is equivalent to owners' equity.

*As added by P.L.1-1995, SEC.27.*

#### **IC 14-34-7-2.5**

##### **"Surface Mining Control and Reclamation Act" defined**

Sec. 2.5. As used in this chapter, "Surface Mining Control and Reclamation Act" means the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 1328).

*As added by P.L.176-1995, SEC.12.*

#### **IC 14-34-7-3**

##### **"Tangible net worth" defined**

Sec. 3. As used in this chapter, "tangible net worth" means:

- (1) net worth; minus
- (2) intangibles such as goodwill and rights to patents or royalties.

*As added by P.L.1-1995, SEC.27.*

#### **IC 14-34-7-4**

##### **"Current assets" defined**

Sec. 4. (a) As used in this section, "current assets" means cash or other assets or resources that are reasonably expected to be converted to cash or sold or consumed within:

- (1) one (1) year; or
- (2) the normal operating cycle of the business.

(b) As used in this section, "current liabilities" means:

- (1) obligations that are reasonably expected to be paid or liquidated within one (1) year or within the normal operating cycle of the business; plus
- (2) dividends payable on preferred stock within:
  - (A) one (1) quarter, if declared; or
  - (B) one (1) year, if a pattern of declaring dividends each quarter is apparent from past business practice.

(c) As used in this section, "fixed assets" means plants and equipment. The term does not include land or coal in place.

(d) Subject to subsection (f), the director may accept a self-bond from an applicant for a permit if all of the following conditions are met by the applicant or the applicant's corporate guarantor at the time the self-bond is accepted:

- (1) The applicant designates a suitable agent to receive service of process in Indiana.
- (2) The applicant has been in continuous operation as a business entity for at least five (5) years immediately preceding the time of application.
  - (A) The director may allow a joint venture or syndicate with less than five (5) years of continuous operation to qualify

under this requirement if each member of the joint venture or syndicate has been in continuous operation for at least five (5) years immediately preceding the time of application.

(B) When calculating the period of continuous operation, the director may exclude periods of interruption to the operation of the business entity that:

- (i) were beyond the applicant's control; and
- (ii) do not affect the applicant's likelihood of remaining in business during the proposed surface coal mining and reclamation operations.

(3) The applicant is not subject to any outstanding cessation order issued under IC 13-4.1-11-5 (before its repeal), IC 14-34-15-6, or the Surface Mining Control and Reclamation Act.

(4) The applicant does not owe any civil penalties under IC 13-4.1-12 (before its repeal), IC 14-34-16, or the Surface Mining Control and Reclamation Act.

(5) The applicant does not owe any fees under this article, IC 13-4.1 (before its repeal), or the Surface Mining Control and Reclamation Act, and is not delinquent in the payment of any fees or civil penalties.

(6) The applicant's permit has never been suspended under this article or IC 13-4.1 (before its repeal), and the applicant is not listed on the Applicant Violator System (AVS).

(7) The applicant submits financial information in sufficient detail to demonstrate that the applicant satisfies at least one (1) of the following criteria:

(A) The applicant has a current rating for the applicant's most recent bond issuance of "A" or higher as issued by:

- (i) Moody's Investor Service; or
- (ii) Standard and Poor's Corporation.

The applicant must identify the rating service used by the applicant and provide any additional relevant information concerning how the service arrived at the specific ratings.

(B) The applicant has the following:

- (i) A tangible net worth of at least ten million dollars (\$10,000,000).
- (ii) A ratio of total liabilities to net worth of not more than 2.5:1.
- (iii) A ratio of current assets to current liabilities of at least 1.2:1.

The ratio requirements set forth in this clause must be met for the year immediately preceding the application, and must be documented for the four (4) years preceding the application. An explanation shall be included for any year in which the ratios of the applicant did not meet the requirements set forth in this clause. The failure of an applicant to meet the ratio requirements set forth in this clause for any of the four (4) years preceding the application does not necessarily disqualify an applicant for self-bonding

under this chapter.

(C) The applicant has the following:

- (i) Fixed assets in the United States that total at least twenty million dollars (\$20,000,000).
- (ii) A ratio of total liabilities to net worth of not more than 2.5:1.
- (iii) A ratio of current assets to current liabilities of at least 1.2:1.

The ratio requirements set forth in this clause must be met for the applicant's fiscal year immediately preceding the application, and must be documented for the four (4) years preceding the application. An explanation shall be included for any year in which the ratios of the applicant did not meet the requirements set forth in this clause. The failure of an applicant to meet the ratio requirements set forth in this clause for any of the four (4) years preceding the application does not necessarily disqualify an applicant for self-bonding under this chapter.

(8) The applicant submits the following:

(A) Financial statements for the most recently completed fiscal year accompanied by a report prepared by an independent certified public accountant:

- (i) in conformity with generally accepted accounting principles; and
- (ii) containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion.

(B) Unaudited financial statements for completed quarters in the current fiscal year.

(C) Comparative financial data from a five (5) year period, that must include a comparative income statement and a comparative balance sheet.

(D) A statement listing:

- (i) every lien filed against any assets of the applicant in any jurisdiction in the United States for an amount that is more than two percent (2%) of the applicant's net worth;
- (ii) every action pending against the applicant;
- (iii) every judgment rendered against the applicant within the seven (7) years preceding the application that remains unsatisfied and for an amount that is more than two percent (2%) of the applicant's net worth; and
- (iv) any petitions or actions in bankruptcy against the applicant, including actions for reorganization.

(E) Additional unaudited information requested by the director.

(e) If an applicant submits financial information to demonstrate that the applicant satisfies the criteria set forth in subsection (d)(7)(B) or (d)(7)(C), the two (2) ratios set forth in subsection (d)(7)(B) or (d)(7)(C) shall be calculated with the proposed self-bond amount included in the current liabilities or total liabilities for the

year of the application. The operator may deduct from the total liabilities the costs currently accrued for reclamation that appear on the balance sheet current in the year of the application.

(f) Notwithstanding subsection (d)(7), the director may not accept a self-bond from an applicant unless the financial ratios of the applicant are at least as favorable as those listed for the medium performers in the Dun and Bradstreet listing of Industry Norms and Key Business Ratios.

(g) Each lien, action, and petition listed under subsection (d)(8)(E) must be identified by the named parties, the jurisdiction in which the matter was filed, the case number, and the final disposition or the current status of any action still pending.

*As added by P.L.1-1995, SEC.27. Amended by P.L.176-1995, SEC.13.*

#### **IC 14-34-7-4.1**

##### **Method of replacement of self-bonds**

Sec. 4.1. (a) Before January 1, 1996, all self-bonds in effect on July 1, 1995, must be replaced in one (1) of the following ways:

(1) The self-bond may be replaced by another form of bond allowed under IC 13-4.1-6.

(2) The self-bonded permittee may reapply for self-bonding under this chapter.

(b) If the application of a permittee submitted under subsection (a)(2) is not accepted, the permittee must replace its self-bond with another form of bond allowed under IC 14-34-6.

*As added by P.L.176-1995, SEC.14.*

#### **IC 14-34-7-5**

##### **"Corporate guarantee" defined**

Sec. 5. (a) A written guarantee accepted under this section is referred to as a "corporate guarantee".

(b) The director may accept a corporate guarantee for an applicant's self-bond from a corporate guarantor if, at the time the self-bond is accepted, the following conditions are met:

(1) The guarantee is in writing.

(2) The applicant satisfies the requirements of section 4(d)(1), 4(d)(2), and 4(d)(8) of this chapter.

(3) The guarantor meets the conditions imposed upon an applicant under section 4 of this chapter.

(c) The terms of a corporate guarantee must provide for the following:

(1) If the applicant fails to complete the reclamation plan, the guarantor shall complete the reclamation plan or the guarantor is liable under the indemnity agreement to provide money to the department sufficient to complete the reclamation plan, but not to exceed the bond amount.

(2) The corporate guarantee remains in force unless:

(A) the guarantor sends notice of cancellation by certified mail to:

- (i) the applicant; and
  - (ii) the director;
- at least ninety (90) days before the cancellation date; and
- (B) the director accepts the cancellation.
- (3) A notice of cancellation of a corporate guarantee may be accepted by the director if:
- (A) the applicant obtains a suitable replacement bond allowed under IC 13-4.1-6 (before its repeal) or IC 14-34-6 before the cancellation date; or
  - (B) the land or parts of the land for which the self-bond was accepted have not been disturbed.

*As added by P.L.1-1995, SEC.27. Amended by P.L.176-1995, SEC.15.*

#### **IC 14-34-7-6**

##### **Self-bond or corporate guarantee; percentage of net worth**

Sec. 6. (a) For the director to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for surface coal mining and reclamation operations in the United States may not exceed twenty-five percent (25%) of the applicant's tangible net worth in the United States.

(b) For the director to accept a corporate guarantee, the total amount of the corporate guarantor's present and proposed self-bonds and guaranteed self-bonds for surface coal mining and reclamation operations in the United States may not exceed twenty-five percent (25%) of the guarantor's tangible net worth in the United States.

*As added by P.L.1-1995, SEC.27.*

#### **IC 14-34-7-7**

##### **Indemnity agreement**

Sec. 7. If the director accepts an applicant's self-bond, an indemnity agreement shall be submitted to the director. The indemnity agreement must meet the following requirements:

- (1) The indemnity agreement must provide in express terms that the persons or parties bound by the agreement are liable to the director for all costs incurred by the director:
  - (A) in pursuing forfeiture of any self-bonds posted by the permittee for whom the indemnity agreement was submitted; and
  - (B) in reclaiming those areas at which the permittee for whom the indemnity agreement was submitted retains excess monetary liability to the director under IC 14-34-6-16(c).
- (2) The indemnity agreement must:
  - (A) be executed by all persons and parties who are to be bound by the agreement, including the corporate guarantor; and
  - (B) bind each party jointly and severally.
- (3) A corporation applying for a self-bond and a corporate guarantor guaranteeing a self-bond must submit an indemnity agreement signed by two (2) corporate officers who are

authorized to bind the corporation. The director must be given a copy of the authorization and an affidavit certifying that the indemnity agreement is valid under all applicable state and federal laws. A corporate guarantor must give the director a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement.

(4) If the applicant is a partnership, joint venture, or syndicate, the agreement must bind each partner or party who has a beneficial interest, directly or indirectly, in the applicant.

(5) The applicant or corporate guarantor must complete the approved reclamation plan for the land as to which a bond has been forfeited for failure to reclaim or pay to the director an amount necessary to complete the approved reclamation plan, not to exceed the bond amount.

(6) All bonds and guarantees must be indemnified corporately and personally by all principals.

*As added by P.L.1-1995, SEC.27. Amended by P.L.176-1995, SEC.16.*

#### **IC 14-34-7-7.1**

##### **Collateral and indemnity agreement to support self-bond application**

Sec. 7.1. (a) If an application for self-bonding is rejected based on the information required by section 4 of this chapter or limitations set forth in section 4 of this chapter, the applicant may offer collateral (as defined in section 0.5 of this chapter) and an indemnity agreement to support the applicant's self-bond application. An indemnity agreement offered under this subsection is subject to the requirements of section 7 of this chapter.

(b) The following information must be provided about collateral offered under subsection (a) to support a self-bond:

(1) The value of the property. The property must be valued at the difference between the fair market value of the property and reasonable expenses the department anticipates incurring in selling the property. The fair market value must be determined by an appraiser proposed by the applicant. The director may reject an appraiser proposed by the applicant. An appraisal of property must be performed expeditiously and a copy of the appraisal must be furnished to the director and the applicant. The applicant must pay the cost of the appraisal.

(2) A description of the property, indicating that the property is satisfactory for deposit under this section, and a statement of:

(A) all liens, encumbrances, or adverse judgments imposed on the property; and

(B) any pending litigation relating to the property.

(c) The director has full discretion in accepting collateral offered under subsection (a) to support a self-bond.

(d) Real property offered as collateral under subsection (a) may not include lands that are in the process of being mined or reclaimed

or lands that are the subject of an application under this chapter. The operator may offer land that was formerly subject to a bond if the bond has been released.

(e) Securities offered as collateral under subsection (a) may include only securities that meet the definition of collateral set forth in section 0.5 of this chapter.

(f) Personal property offered as collateral under subsection (a) must be in the possession of the operator, must be unencumbered, and may not include the following:

- (1) Property that is already being used as collateral.
- (2) Goods that the operator sells in the ordinary course of business.
- (3) Fixtures.
- (4) Certificates of deposit that are not federally insured or that are issued by a depository that is unacceptable to the director.

(g) Evidence of ownership of property offered as collateral under subsection (a) must be submitted in one (1) of the following forms:

- (1) If the property offered is real property, the interest of the applicant must be evidenced by a title certificate or similar evidence of title and encumbrance prepared by an abstract office that is:

- (A) authorized to transact business in Indiana; and
- (B) satisfactory to the director.

- (2) If the property offered is a security, the operator's interest must be evidenced by possession of the original or a notarized copy of the certificate or a certified statement of account from a brokerage house.

- (3) If the property offered is personal property, evidence of ownership must be submitted in a form that:

- (A) is satisfactory to the director; and
- (B) affirmatively establishes unencumbered title to the property of the operator.

(h) An applicant that offers personal property as collateral under subsection (a), in addition to submitting the evidence required by subsection (g), must satisfy the financial requirements set forth in section 4(d)(7)(B) and 4(d)(7)(C) of this chapter.

(i) If the director accepts personal property from an applicant as collateral under subsection (a), the director shall require the following:

- (1) Quarterly and annual maintenance reports prepared by the applicant.
- (2) A perfected, first lien security interest in the property in favor of the department of natural resources. The security interest must be perfected through:
  - (A) the filing of a financing statement; or
  - (B) surrender of possession of the collateral to the department under subsection (k).

(j) If the director accepts personal property from an applicant as collateral under subsection (a), the director may require quarterly or annual inspections of the personal property by a qualified



representative of the department.

(k) If the director accepts personal property from an applicant as collateral under subsection (a), the director shall, as applicable, require:

- (1) possession by the department of the personal property; or
- (2) a mortgage or security agreement executed by the applicant in favor of the department.

(l) The property interest conveyed under subsection (k) vests in the department to secure the right and power to sell or otherwise dispose of the property by public or private proceedings so as to ensure reclamation of the affected lands in accordance with the reclamation plan.

(m) A mortgage executed under subsection (k)(2) must be executed and recorded so as to be first in time and constitute notice of the interest of the department in the property to any prospective subsequent purchaser of the property.

(n) Any income received from the collateral during the period when the collateral is in the possession of the department shall be remitted to the applicant.

(o) If collateral is left in the possession of the applicant, the security agreement executed under subsection (k)(2) must require that, upon default, the applicant shall assemble the collateral and make it available to the department at a place designated by the department that is reasonably convenient to both parties. All costs of transporting and assembling the collateral shall be borne by the applicant.

(p) With the consent of the director, an applicant may substitute other property for any property accepted and held as collateral under this section. Property may be substituted under this subsection only if:

- (1) all the information required concerning property originally submitted as collateral is provided concerning the proposed substitute collateral; and
- (2) all requirements of this section are met with respect to the proposed substitute collateral so that all obligations relating to mining operations are secured under all periods of time.

(q) If collateral is posted under subsection (a) to support a self-bond, the applicant shall:

- (1) notify all persons that have an interest in the collateral of the posting of the collateral and of all other actions affecting the collateral; and
- (2) provide copies of the notices provided under subdivision (1) to the director.

*As added by P.L.176-1995, SEC.17.*

#### **IC 14-34-7-8**

##### **Updated information for self-bond or corporate guarantee**

Sec. 8. The director shall require self-bonded applicants and corporate guarantors to submit:

- (1) an update of the information required under section 4(d)(7),

4(d)(8), and 4(f) of this chapter within ninety (90) days after the close of each fiscal year; and

(2) information required under section 4(d)(8)(B) of this chapter on a quarterly basis not later than sixty (60) days after the end of each quarter;

following the issuance of the self-bond or corporate guarantee.

*As added by P.L.1-1995, SEC.27. Amended by P.L.176-1995, SEC.18.*

#### **IC 14-34-7-9**

##### **Change in financial condition**

Sec. 9. (a) If at any time during the period when a self-bond is posted, the financial conditions of the applicant or the corporate guarantor change so that the criteria of sections 4(d)(7), 4(f), and 6 of this chapter are no longer satisfied, the permittee shall do the following:

(1) Notify the director immediately.

(2) Within ninety (90) days of the change in financial condition post an alternate form of bond in the same amount as the self-bond.

(b) If the applicant does not post an alternate form of bond within ninety (90) days of the change in financial condition, the applicant must cease coal extraction and immediately begin reclamation.

*As added by P.L.1-1995, SEC.27. Amended by P.L.176-1995, SEC.19.*

#### **IC 14-34-7-10**

##### **Report of public accounting consultant**

Sec. 10. (a) An applicant shall submit, in addition to the financial information required under section 4 of this chapter, a report prepared by a qualified independent public accounting consultant selected from a list of public accounting consultants approved by the director. The director shall consider the information in the report when deciding whether to accept the self-bond of an applicant.

(b) The director may also require reports described in subsection (a) after the director accepts the applicant's self-bond, but not more than one (1) time every three (3) years while the self-bond is posted, except as provided in subsection (d).

(c) A consultant who prepares a report under this section must:

(1) verify that the financial information required under section 4 of this chapter was prepared in accordance with generally accepted accounting principles;

(2) verify that the accounting principles referred to in subdivision (1) were applied consistently for each year of the period for which the information is submitted;

(3) state the amount of, and reason for, any restatement of the financial information referred to in subdivision (1) that is necessary to meet the requirements of subdivision (2); and

(4) state whether any information reviewed during the preparation of the report would lead the consultant to conclude

that the applicant would not meet the requirements of section 4 of this chapter at the end of each of the three (3) fiscal years ending after the calendar month in which the report is completed.

(d) If the consultant who prepares a report under this section is unable to provide the information required by subsection (c)(4), the applicant for whom the report is prepared shall submit an updated report annually.

(e) An applicant shall submit a report required under this section not later than ninety (90) days after the director notifies the applicant or permittee that the report is required.

(f) If an applicant fails to submit a report required under subsection (a), the director shall refuse to accept the self-bond of the applicant until the applicant files the report.

(g) If a permittee who has posted a self-bond under this chapter fails to submit a report required under subsection (b), the director may require the permittee to post an alternate form of bond not later than ninety (90) days after the deadline for the submission of the report.

*As added by P.L.176-1995, SEC.20.*

#### **IC 14-34-7-11**

##### **Incremental self-bonds; coverage of deferred grading areas**

Sec. 11. (a) The director may not accept an applicant's self-bond under this chapter in an increment unless, when the self-bond is initially approved under this chapter, the total area of the increment is one hundred percent (100%) self-bonded.

(b) When a self-bond is initially accepted from a permit applicant under this chapter, the self-bond may cover areas subject to the permit on which, as of July 1, 1995, grading has been deferred.

(c) After a self-bond is accepted under this chapter:

(1) coverage under the self-bond continues on any area subject to a grading deferral that is in existence on July 1, 1995, if the grading deferral is subsequently extended beyond its original term; but

(2) an area subject to the permit as to which a grading deferral is granted after July 1, 1995, may not be covered by self-bonding.

(d) An area described in subsection (c)(2):

(1) must be covered by another form of bond allowed under IC 14-34-6; and

(2) may not be covered by the surface coal mine reclamation bond pool established by IC 14-34-8.

*As added by P.L.176-1995, SEC.21.*

#### **IC 14-34-7-12**

##### **Alternate forms of self-bonds; monitoring of reclamation**

Sec. 12. (a) If a permittee who posted a self-bond under this chapter does not file an application for a Phase I grading release with the department before the second November 1 after the year in which

the coal was removed from the site covered by the self-bond, the permittee shall replace the self-bond with an alternate form of bond within ninety (90) days of the November 1 deadline established under this subsection.

(b) If:

(1) a permittee who posted a self-bond under this chapter files an application for a Phase I grading release with the department before the second November 1 after the year in which the coal was removed from the site covered by the self-bond; but

(2) the application is rejected by the department;

the permittee shall replace the self-bond with an alternate form of bond not later than ninety (90) days after the denial of the application for a Phase I grading release becomes a final order of the department.

(c) All acreage and structures that are within a permitted area and are used to facilitate active mining and reclamation operations are exempt from subsection (b). Areas described in this subsection include, but are not limited to, the following:

(1) Processing sites.

(2) Tipples.

(3) Railroad sidings.

(4) Buildings.

(5) Haul roads.

(6) Topsoil stockpiles.

(7) Sediment ponds.

(d) For the purposes of subsection (c), the director shall determine what areas are used to facilitate active mining and reclamation operations.

(e) A permittee shall submit annual reports to the department in a form that the director considers necessary to facilitate the effective monitoring of acres under self-bonding that have been affected and reclaimed.

(f) An area that:

(1) is not subject to the time limitations set forth in subsection (b); and

(2) has been used for the disposal of:

(A) coal combustion fly or bottom ash;

(B) flue gas desulfurization byproducts generated by coal combustion units; or

(C) coal processing wastes;

is no longer eligible for self-bonding ten (10) years after the disturbance of the area or the self-bonding of the area, whichever is later. An alternative form of bond must be posted for the area under IC 14-34-6 not later than ninety (90) days after the area becomes ineligible for self-bonding under this subsection.

(g) Whenever an area is determined to be no longer eligible for self-bonding, and an alternative form of bond is posted under IC 14-34-6, the area:

(1) is never again eligible for self-bonding; and

(2) may not be bonded by the surface coal mine reclamation bond pool established under IC 14-34-8-3.

*As added by P.L.176-1995, SEC.22. Amended by P.L.2-1997, SEC.55.*

**IC 14-34-7-13**

**Effect of invalidation of IC 14-34-7-1**

Sec. 13. For purposes of IC 1-1-1-8, if the amendments to IC 14-34-7-1, as amended by SEA 125-1995, are held invalid or otherwise unenforceable, the other amendments to IC 14-34-7 made by SEA 125-1995 are also void.

*As added by P.L.176-1995, SEC.23.*